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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 REARDEN LLC, REARDEN MOVA LLC,
12 California limited liability companies,
13
14 Plaintiff,

15 v.

16 THE WALT DISNEY COMPANY, a Delaware
17 corporation, WALT DISNEY MOTION
18 PICTURES GROUP, INC., a California
19 corporation, BUENA VISTA HOME
20 ENTERTAINMENT, INC. a California
21 corporation, MARVEL STUDIOS, LLC, a
22 Delaware limited liability company,
23 MANDEVILLE FILMS, INC., a California
24 corporation,

25 Defendant.

26 REARDEN LLC and REARDEN MOVA LLC,
27
28 Plaintiffs,

29 v.

30 TWENTIETH CENTURY FOX FILM
31 CORPORATION, a Delaware corporation and
32 TWENTIETH CENTURY FOX HOME
33 ENTERTAINMENT LLC, a Delaware limited
34 liability company,

35 Defendants.

Case Nos. 3:17-cv-04006-JST
3:17-cv-04191-JST
3:17-cv-04192-JST
3:17-cv-04187-JST

**[PROPOSED]
STIPULATED PROTECTIVE
ORDER FOR LITIGATION
INVOLVING HIGHLY SENSITIVE
CONFIDENTIAL INFORMATION
AND/OR TRADE SECRETS**

1 REARDEN LLC and REARDEN MOVA LLC,

2 Plaintiffs,

3 v.

4 PARAMOUNT PICTURES CORPORATION, a
5 Delaware corporation, and PARAMOUNT HOME
6 ENTERTAINMENT DISTRIBUTION INC. a
7 Delaware corporation,

8 Defendants.

9 REARDEN LLC, REARDEN MOVA LLC,
10 California limited liability companies,

11 Plaintiffs,

12 v.

13 CRYSTAL DYNAMICS, INC., a California
14 corporation, SQUARE ENIX INC., a
15 Washington Corporation,

16 Defendants.

TABLE OF CONTENTS

Page

1.	PURPOSES AND LIMITATIONS	1
2.	DEFINITIONS	1
3.	SCOPE.....	3
4.	DURATION	4
5.	DESIGNATING PROTECTED MATERIAL	4
6.	CHALLENGING CONFIDENTIALITY DESIGNATIONS	7
7.	ACCESS TO AND USE OF PROTECTED MATERIAL.....	9
8.	PROSECUTION BAR	15
9.	SOURCE CODE	15
10.	PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION	23
11.	A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION.....	24
12.	UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL	25
13.	INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL	26
14.	MISCELLANEOUS.....	26
15.	FINAL DISPOSITION.....	27

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords from public disclosure and use extends
8 only to the limited information or items that are entitled to confidential treatment under the
9 applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
12 applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that the Designating Party (i) would not normally
18 reveal to third parties except in confidence, or has undertaken with others to maintain in confidence,
19 (ii) believes in good faith is significantly sensitive, or (iii) protected by a right to privacy under
20 federal or state law or any other applicable privilege or right related to confidentiality or privacy.

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
22 as their support staff).

23 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

25 2.5 Designating Party: a Party or Non-Party that designates information or items that it
26 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
27

CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, (2) is not a current officer, director or employee of a Party or of a Party’s competitor, and (3) at the time of retention, is not anticipated to become an officer, director or employee of a Party or of a Party’s competitor.

2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely sensitive “Confidential Information or Items” representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means (“Source Code Material”).

2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.13 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.15 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, electronically stored information (ESI) consulting or document management, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium; jury consulting, mock trials) and their employees and subcontractors.

2.16 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the

1 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
2 Protected Material at trial shall be governed by a separate agreement or order.

3 **4. DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations imposed by this
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
6 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
7 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
8 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
9 limits for filing any motions or applications for extension of time pursuant to applicable law.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
12 Non-Party that designates information or items for protection under this Order must take care to limit
13 any such designation to specific material that qualifies under the appropriate standards. To the extent
14 it is practical to do so, the Designating Party must designate for protection only those parts of
15 material, documents, items, or oral or written communications that qualify – so that other portions of
16 the material, documents, items, or communications for which protection is not warranted are not
17 swept unjustifiably within the ambit of this Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
19 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
20 encumber or retard the case development process or to impose unnecessary expenses and burdens on
21 other parties) expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information or items that it designated for
23 protection do not qualify for protection at all or do not qualify for the level of protection initially
24 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
25 mistaken designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
27 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or

1 Discovery Material that qualifies for protection under this Order must be clearly so designated before
2 the material is disclosed or produced. Designation in conformity with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
4 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
5 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or
6 “HIGHLY CONFIDENTIAL – SOURCE CODE” to each page that contains protected material.

7 A Party or Non-Party that makes original documents or materials available for inspection
8 need not designate them for protection until after the inspecting Party has indicated which material it
9 would like copied and produced. During the inspection and before the designation, all of the material
10 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY.” After the inspecting Party has identified the documents it wants copied and
12 produced, the Producing Party must determine which documents, or portions thereof, qualify for
13 protection under this Order. Then, before producing the specified documents, the Producing Party
14 must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
15 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE) to each page
16 that contains Protected Material.

17 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
18 Designating Party identify on the record, before the close of the deposition, hearing, or other
19 proceeding, all protected testimony and specify the level of protection being asserted. When it is
20 impractical to identify separately each portion of testimony that is entitled to protection and it
21 appears that substantial portions of the testimony may qualify for protection, the Designating Party
22 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right to
23 have up to 30 days to identify the specific portions of the testimony as to which protection is sought
24 and to specify the level of protection being asserted. Only those portions of the testimony that are
25 appropriately designated for protection within the 30 days shall be covered by the provisions of this
26 Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition or up
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1 to 30 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
4 other proceeding to include Protected Material so that the other parties can ensure that only
5 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
6 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
7 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.”

9 Any Protected Material that is used in the taking of a deposition shall remain subject to the
10 provisions of this Protective Order, along with the transcript pages of the deposition testimony
11 dealing with such Protected Material. In such cases the court reporter shall be informed of this
12 Protective Order and shall be required to operate in a manner consistent with this Protective Order.
13 In the event the deposition is videotaped, the original and all copies of the videotape shall be marked
14 by the video technician to indicate that the contents of the videotape are subject to this Protective
15 Order, substantially along the lines of “This videotape contains confidential testimony used in this
16 case and is not to be viewed or the contents thereof to be displayed or revealed except pursuant to the
17 terms of the operative Protective Order in this matter or pursuant to written stipulation of the
18 parties.” Counsel for any Designating Party shall have the right to exclude from oral depositions,
19 other than the deponent, deponent’s counsel, the reporter and videographer (if any), any person who
20 is not authorized by this Protective Order to receive or access Protected Material based on the
21 designation of such Protected Material. Such right of exclusion shall be applicable only during
22 periods of examination or testimony regarding such Protected Material.

23 Transcripts containing Protected Material shall have an obvious legend on the title page that
24 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
25 (including line numbers as appropriate) that have been designated as Protected Material and the level
26 of protection being asserted by the Designating Party. The Designating Party shall inform the court
27 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day

1 period for designation shall be treated during that period as if it had been designated “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
3 expiration of that period, the transcript shall be treated only as actually designated.

4 (c) for information produced in some form other than documentary and for any other tangible
5 items, that the Producing Party affix in a prominent place on the exterior of the container or
6 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
8 CODE”. If only a portion or portions of the information or item warrant protection, the Producing
9 Party, to the extent practicable, shall identify the protected portion(s) and specify the level of
10 protection being asserted.

11 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
12 information or items does not, standing alone, waive the Designating Party’s right to secure
13 protection under this Order for such material. Upon discovery of an inadvertent failure to designate,
14 a Producing Party may notify the Receiving Party in writing that the material is to be designated.
15 Upon receipt of such notice, the Receiving Party must make reasonable efforts to assure that the
16 material is thereafter treated in accordance with the provisions of this Order. The Designating Party
17 shall provide substitute copies of documents bearing the confidentiality designation. Upon receiving
18 substitute copies, the Receiving Parties shall return or securely destroy, at the Designating Party’s
19 option, all material that was not designated properly.

20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at
22 any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary
23 to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
24 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality
25 designation by electing not to mount a challenge promptly after the original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
27 by providing written notice of each designation it is challenging and describing the basis for each

1 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
2 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
3 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
4 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
5 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
6 Party must explain the basis for its belief that the confidentiality designation was not proper and must
7 give the Designating Party an opportunity to review the designated material, to reconsider the
8 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
9 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
10 has engaged in this meet and confer process first or establishes that the Designating Party is
11 unwilling to participate in the meet and confer process in a timely manner.

12 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
13 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
14 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 24 days of the
15 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
16 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
17 competent declaration affirming that the movant has complied with the meet and confer requirements
18 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion
19 including the required declaration within 21 days (or 14 days, if applicable) shall automatically
20 waive the confidentiality designation for each challenged designation. In addition, the Challenging
21 Party may file a motion challenging a confidentiality designation at any time if there is good cause
22 for doing so, including a challenge to the designation of a deposition transcript or any portions
23 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
24 declaration affirming that the movant has complied with the meet and confer requirements imposed
25 by the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
27 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary
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1 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the
2 Designating Party has waived the confidentiality designation by failing to file a motion to retain
3 confidentiality as described above, all parties shall continue to afford the material in question the
4 level of protection to which it is entitled under the Producing Party's designation until the court rules
5 on the challenge.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
8 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
10 the categories of persons and under the conditions described in this Order. When the litigation has
11 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a location and in a
14 secure manner that ensures that access is limited to the persons authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
16 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
17 information or item designated "CONFIDENTIAL" only to:

18 (a) the Receiving Party's House Counsel and Outside Counsel of Record in this action, as
19 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
20 the information for this litigation (by executing this Order, Outside Counsel acknowledges the
21 obligation on behalf of all employees of Outside Counsel to abide by the terms and conditions of the
22 Order and will appropriately disclose these terms and conditions to all employees who will have
23 access to information pursuant to the Order);

24 (b) The employees (including House Counsel) of the Receiving Party to whom disclosure is
25 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
26 to Be Bound" (Exhibit A);

1 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
2 necessary for this litigation, who have signed the “Acknowledgment and Agreement to Be Bound”
3 (Exhibit A), and for whom no unresolved objections to such disclosure exist after compliance with
4 the requirements set out in Section 7.6(a) below;

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, and Professional
7 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) any designated arbitrator or mediator who is assigned to hear this matter, or who has been
10 selected by the Parties, and his or her staff, who have signed the “Acknowledgement and Agreement
11 to Be Bound by Stipulated Protective Order” (Exhibit A); and

12 (g) while testifying at deposition or trial in this action only: (i) any current or former officer,
13 director or employee of the producing party or original source of the information; (ii) any person
14 designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal
15 Rules of Civil Procedure; (iii) expert witnesses testifying on behalf of the Producing Party; and/or
16 (iv) any person who authored, previously received (other than in connection with this litigation), or
17 was directly involved in creating, modifying, or editing the Protected Material, as evident from its
18 face or reasonably certain in view of other testimony or evidence.

19 (h) Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
20 Material must be separately bound by the court reporter and may not be disclosed to anyone except
21 as permitted under this Stipulated Protective Order.

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
23 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
27 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for

1 this litigation (by executing this Order, Outside Counsel acknowledges the obligation on behalf of all
2 employees of Outside Counsel to abide by the terms and conditions of the Order and will
3 appropriately disclose these terms and conditions to all employees who will have access to
4 information pursuant to the Order);

5 (b) Subject to the provisions set forth in paragraph 7.5, below, Designated House Counsel of
6 a Defendant Receiving Party (1) who has no involvement in competitive decision-making, (2) to
7 whom disclosure is reasonably necessary for this litigation, and (3) who has signed the
8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
10 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
11 (3) as to whom the procedures set forth in paragraph 7.6(a), below, have been followed;

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants, and mock jurors, and
14 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (f) while testifying at deposition or trial in this action only: (i) any current or former officer,
17 director or employee of the producing party or original source of the information; (ii) any person
18 designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal
19 Rules of Civil Procedure; (iii) expert witnesses testifying on behalf of the Producing Party; and/or
20 (iv) any person who authored, previously received (other than in connection with this litigation), or
21 was directly involved in creating, modifying, or editing the source code, as evident from its face or
22 reasonably certain in view of other testimony or evidence; and

23 (g) any designated arbitrator or mediator who is assigned to hear this matter, or who has been
24 selected by the Parties, and his or her staff, who have signed the “Acknowledgement and Agreement
25 to Be Bound by Stipulated Protective Order” (Exhibit A).

26 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
27 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL –
2 SOURCE CODE” only to:

3 (a) Subject to the provisions set forth in paragraph 7.5, below, the Receiving Party’s Outside
4 Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it
5 is reasonably necessary to disclose the information for this litigation (by executing this Order,
6 Outside Counsel acknowledges the obligation on behalf of all employees of Outside Counsel to abide
7 by the terms and conditions of the Order and will appropriately disclose these terms and conditions
8 to all employees who will have access to information pursuant to the Order);

9 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
10 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
11 (3) as to whom the procedures set forth in paragraph 7.6(a), below, have been followed;

12 (c) the court and its personnel;

13 (d) court reporters and their staff, professional jury or trial consultants, and mock jurors, and
14 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (e) while testifying at deposition or trial in this action only: (i) any current or former officer,
17 director or employee of the producing party or original source of the information; (ii) any person
18 designated by the Producing Party to provide testimony pursuant to Rule 30(b)(6) of the Federal
19 Rules of Civil Procedure; (iii) expert witnesses testifying on behalf of the Producing Party; and/or
20 (iv) any person who authored, previously received (other than in connection with this litigation), or
21 was directly involved in creating, modifying, or editing the Protected Material, as evident from its
22 face or reasonably certain in view of other testimony or evidence; and

23 (f) any designated arbitrator or mediator who is assigned to hear this matter, or who has been
24 selected by the Parties, and his or her staff, who have signed the “Acknowledgement and Agreement
25 to Be Bound by Stipulated Protective Order” (Exhibit A).

1 7.5 Protected Material designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” by a Defendant Producing Party
3 shall not be disclosed to the Outside Counsel, House Counsel, or business representatives of any
4 other Defendant (including in-house counsel for any affiliates of that Defendant Receiving Party)
5 without written consent of the Defendant Producing Party.

6 7.6 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
7 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information
8 or Items to Experts.

9 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a
10 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
11 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
12 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must notify, in writing
13 (including via email), the Designating Party of its intent to make such a disclosure. The notification
14 shall (1) identify the full name of the Expert and the city and state of his or her primary residence, (2)
15 include a copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4)
16 identify each person or entity from whom the Expert has received compensation or funding for work
17 in his or her areas of expertise or to whom the expert has provided professional services, including in
18 connection with a litigation, at any time during the preceding five years,¹ and (5) identify (by name
19 and number of the case, filing date, and location of court) any litigation in connection with which the
20 Expert has provided any professional services, including through a declaration, report, or testimony
21 at a deposition or trial, during the preceding five years, and (6) disclose any previous or current
22 contractual relationship with any of the Parties.

23 (b) A Party that makes a request and provides the information specified in the preceding
24 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
25

26 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-
27 party, then the Expert should provide whatever information the Expert believes can be disclosed
28 without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall
be available to meet and confer with the Designating Party regarding any such engagement.

1 within 14 days of delivering the request, the Party receives a written objection from the Designating
2 Party. Any such objection must set forth in detail the grounds on which it is based.

3 (c) The Party that seeks to make such disclosure to an expert of any information or item that
4 has been designated Protected Material need not identify to the Designating Party said information or
5 item to be disclosed.

6 (d) If during the pendency of this matter, the Expert becomes employed or engaged by a
7 competitor to the Parties to this action, the Party retaining such Expert will promptly notify Counsel
8 for the Producing Party of such employment or engagement. The Expert will cease reviewing any
9 Protected Material until all Parties in the action have been advised and either all Parties consent to
10 the Expert continuing to have access to any Protected Material in this matter or as otherwise ordered
11 by the Court.

12 (e) A Party that receives a timely written objection must meet and confer with the
13 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
14 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
15 disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with
16 Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion
17 must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to
18 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
19 suggest any additional means that could be used to reduce that risk. In addition, any such motion
20 must be accompanied by a competent declaration describing the parties' efforts to resolve the matter
21 by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth
22 the reasons advanced by the Designating Party for its refusal to approve the disclosure. If relief from
23 the Court is not sought within that time, the objection shall be deemed withdrawn. If relief is sought,
24 Protected Material shall not be disclosed to the Expert in question until the Court resolves the
25 objection.

1 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden of
2 proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
3 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

4 **8. PROSECUTION BAR**

5 Absent written consent from all Defendants, any individual who on behalf of the Plaintiff
6 personally reviews a Defendant's "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
7 (excluding licenses and other non-technical information) or "HIGHLY CONFIDENTIAL-SOURCE
8 CODE" information shall not be involved in the prosecution of patents or patent applications
9 relating to motion capture technology, including without limitation the patents asserted in this action
10 and any patent or application claiming priority to or otherwise related to the patents asserted in this
11 action, before any foreign or domestic agency, including the United States Patent and Trademark
12 Office ("the Patent Office"). For purposes of this paragraph, "prosecution" includes directly or
13 indirectly drafting, amending, advising, or otherwise affecting the scope or maintenance of patent
14 claims.² To avoid any doubt, "prosecution" as used in this paragraph does not include representing a
15 party challenging a patent before a domestic or foreign agency (including, but not limited to, a
16 reissue protest, *ex parte* reexamination, *inter partes* review, or *inter partes* reexamination). This
17 Prosecution Bar shall begin when access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
18 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" information is first received by the
19 affected individual and shall end two (2) years after final termination of this action, including all
20 appeals.

21 **9. SOURCE CODE**

22 (a) To the extent production of source code becomes necessary in this case, a Producing
23 Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE." Plaintiff has
24 represented that it does not currently intend to seek source code from Defendants. To the extent
25 Plaintiff seeks source code from Defendants at a later date, Defendants reserve their rights to seek
26 modifications of this Protective Order or challenge the production of said source code.

27
28 ² Prosecution includes, for example, original prosecution, reissue and reexamination proceedings.
~~PROPOSED~~ STIPULATED PROTECTIVE ORDER - 15
CASE No.: 3:17-cv-04006-JST; 3:17-cv-04191-JST; 3:17-cv-04192-JST; 3:17-cv-04187-JST

1 (b) Access to Source Code Material shall be limited to Outside Counsel and up to two (2)
2 Experts of the Receiving Party (i.e., not existing employees, principals, managers, members,
3 inventors of the patent in suit, or affiliates of a Party or of an affiliate of a Party) retained for the
4 purpose of this Action and approved to access such HIGHLY CONFIDENTIAL - SOURCE CODE
5 pursuant to the requirements in Paragraph 7.4 above;

6 (c) Access to a Party's Source Code Material shall be provided only on "standalone,"
7 secured computer(s) (that is, the computer may not be linked to any network, including a local area
8 network ("LAN"), an intranet or the Internet) ("Source Code Computer"). The Source Code
9 Computer will be made available by the Party producing the source code. The Source Code
10 Computer(s) shall not be connected to a printer; the Receiving Party may make requests to the
11 Producing Party to print Source Code Material subject to the limits and solely for the limited
12 purposes permitted pursuant to paragraph 9(j) below. The Source Code Computer(s) shall be loaded
13 with software search tools that the Receiving Party requests be loaded on the Source Code
14 Computer(s) to assist in review of the source code, subject to the provisions of paragraph 9(d) below.
15 Prior to the Receiving Party's first inspection, the Producing Party in good faith shall advise the
16 Receiving Party of the Source Code Computer's make and model, operating system, and any pre-
17 installed review tools, so that the Receiving Party can supply additional tools as needed.

18 (d) The Receiving Party must provide the Producing Party with the licensed software
19 tool(s) at least ten (10) business days in advance of the date upon which the Receiving Party wishes
20 to have the additional software tools available for use on the Source Code Computer. For emphasis,
21 it should be noted that the tools for reviewing Source Code Material may not be used to circumvent
22 the protections of this Protective Order in any way. Moreover, the Receiving Party shall not at any
23 time use any compilers, interpreters or simulators in connection with the Producing Party's Source
24 Code Material and in no event shall tools be installed on the stand-alone computer that have the
25 effect of altering, modifying, deleting, copying, or otherwise permitting the reproduction or removal
26 of such Source Code Material. If the Parties are unable to agree on requested software tools to be
27 loaded on the Source Code Computer(s), they may utilize the Court's procedures for resolving

1 discovery disputes after making a good faith effort to resolve their dispute.

2 (e) The Source Code Computer(s) may only be located in a secured room (“Source Code
3 Room”) at the offices of the Producing Party’s lead outside counsel or at some other mutually
4 agreeable location. During its review, the Receiving Party may take notes but shall not copy or
5 transcribe any portion of source code files into the notes except for keywords (not more than five
6 consecutive words) necessary to identify and locate portions of the source code for future reference
7 after a printout is provided. The Receiving Party also shall not copy, remove, or otherwise transfer
8 any portion of the Source Code Material onto any recordable media or recordable device. The
9 Receiving Party is prohibited from bringing outside electronic devices, including but not limited to
10 laptops, thumb drives, hard drives, tape drives, modems, modem cards, floppy drives, zip drives, or
11 other hardware into the secure room. Nor shall any cellular telephones, smartphones, personal digital
12 assistants (PDAs), Blackberries, iPhones, cameras, voice recorders, dictaphones, telephone jacks or
13 other devices be permitted inside the Source Code Room. The Producing Party may visually monitor
14 through a window and/or periodically observe (upon knocking) the activities of the Receiving
15 Party’s authorized attendees during the source code review, both to ensure compliance with the
16 Protective Order and to communicate with attendees as reasonably warranted;

17 (f) Prior to the first inspection of any requested Source Code Material, the Receiving
18 Party shall provide ten (10) business days’ notice of the Source Code Material that it wishes to
19 inspect. Prior to the Receiving Party’s first inspection of the Source Code Material, the Producing
20 Party shall print a directory listing of files available for inspection and shall provide that directory to
21 the Receiving Party, with the listing itself protected as Highly Confidential – Source Code unless the
22 Producing Party designates it otherwise. The Receiving Party shall have five (5) days to inspect any
23 Source Code Material provided, and will be required by the Producing Party to sign in and sign out
24 upon entering and exiting the Source Code Room. The Parties agree to meet and confer regarding the
25 need for further days as necessary. The Receiving Party shall provide five (5) business days’ notice
26 prior to any additional inspection. When requesting inspection of a Party’s Source Code Material, the
27 Receiving Party shall identify all persons who will inspect the Producing Party’s Source Code

1 Material on behalf of a Receiving Party, including members of a Receiving Party's Outside Counsel.
2 The Receiving Party shall make reasonable efforts to restrict its requests for such access to the
3 Source Code Computer(s) to normal business hours, which for purposes of this paragraph shall be
4 8:00 a.m. through 5:00 p.m. on normal business days (i.e., weekdays that are not Federal or state
5 holidays). The Parties shall cooperate in good faith such that maintaining the Producing Party's
6 Source Code Material at the offices of its Outside Counsel (or at some other mutually agreeable
7 location) shall not unreasonably hinder the Receiving Party's ability to efficiently and effectively
8 conduct the prosecution or defense of this Action;

9 (g) A Receiving Party may only to the extent necessary, include excerpts of Source Code
10 Material in a pleading, exhibit, expert report, discovery document, or other Court document ("Source
11 Code Document"), provided that the Source Code Documents are appropriately marked under this
12 Order, restricted to those who are entitled to have access to them as specified herein, and, if filed
13 with the Court, filed under seal in accordance with Civil Local Rule 79-5.

14 (h) To the extent portions of Source Code Material are quoted in a Source Code
15 Document, either (1) the entire Source Code Document will be stamped and treated as HIGHLY
16 CONFIDENTIAL - SOURCE CODE or (2) those pages containing quoted Source Code Material
17 will be separately stamped and treated as HIGHLY CONFIDENTIAL - SOURCE CODE;

18 (i) No electronic copies of Source Code Material shall be made without prior written
19 consent of the Producing Party, except for limited portions of the Source Code Material necessary to
20 create documents which, pursuant to the Court's rules, procedures and order, must be filed or served
21 electronically. Should printouts or photocopies be transferred back to electronic media, such media
22 shall be labeled "HIGHLY CONFIDENTIAL - SOURCE CODE," password protected, and shall
23 continue to be treated as such;

24 (j) The Producing Party shall make available in the source code room a software virtual
25 printer such as Adobe Acrobat or Microsoft XPS Document Writer that renders the equivalent of a
26 printed page, in color, in an electronic portable document format installed on the stand-alone
27 computer. For the purpose of requesting paper copies of portions of the Source Code Material, the

1 Receiving Party may identify such portions by saving them in an electronic portable document
2 format using the virtual printer that is provided in the source code room. In no event may the
3 Receiving Party request the printing of more than 20 consecutive pages, 20 lines of code per page, or
4 more than 300 pages total, of source code for any software release without prior written approval of
5 the Producing Party. If the Producing Party refuses the Receiving Party's request to print additional
6 pages, the Producing Party will bear the burden of showing why it should not comply with Receiving
7 Party's request for additional pages. These page limitations will not preclude any Party from seeking
8 additional printed pages for good cause. Upon the Receiving Party's request to produce printed
9 copies of Source Code Material using the virtual printer, the Producing Party shall Bates number,
10 copy and label the printed, color copies as HIGHLY CONFIDENTIAL - SOURCE CODE and return
11 them to the Receiving Party within four (4) business days of a request to print unless objected to, any
12 such objection to be addressed in the manner set forth (for objections other than to the number of
13 consecutive pages, lines, or total pages) in subsection (k) below. The Producing Party will timely
14 deliver one printed color copy to the Receiving Party. The Receiving Party shall only request
15 printing of portions of the Source Code in good faith. Upon request by the Producing Party, the
16 Receiving Party shall provide reasonable assurances and/or descriptions of the security measures
17 employed by the Receiving Party and/or qualified persons who receive any printed Source Code
18 material. No further hard copies of such Source Code Material shall be made and the Source Code
19 Material shall not be transferred into any electronic format or onto any electronic media except that:

20
21 (A) The Receiving Party is permitted to make up to five (5)
22 additional hard copies for use at a deposition. One hard copy of the
23 Source Code Material may be marked as an exhibit for the deposition,
24 and then maintained by counsel for the party presenting the exhibit
25 during the deposition in a secured locked area. All other copies shall be
26 destroyed immediately after the deposition is concluded.

27 (B) The Receiving Party is permitted to make up to five (5)

1 additional hard copies for the Court in connection with a court filing,
2 hearing, or trial, and of only the specific pages directly relevant to and
3 necessary for deciding the issue for which the portions of the Source
4 Code Material are being filed or offered.

5 (C) Electronic copies of Source Code Material may be made to
6 be included in documents which, pursuant to the Court's rules,
7 procedures and order(s), may be filed or served electronically. Only the
8 necessary amount of electronic copies to effectuate such filing or
9 service may be stored on any Receiving Party server, hard drive,
10 thumb drive, or other electronic storage device at any given time. After
11 any such electronic filing or service, the Receiving Party may maintain
12 reasonable copies of such filings, but shall delete all other electronic
13 copies of Source Code from all Receiving Party electronic storage
14 devices.

15 (D) The Receiving Party is permitted to possess up to six (6)
16 copies of all or any portion of the hard copy print-outs of Source Code
17 Material provided by the Producing Party, either in hard copy form or
18 on CD-ROMs or DVDs. The Receiving Party is also permitted to make
19 temporary copies necessarily made in the production of CD-ROMs or
20 DVDs, provided any such copies are immediately deleted once the
21 temporary copies are no longer required for the production of the CD-
22 ROMs or DVDs. A Receiving Party may destroy one or more of the
23 six (6) previously created copies and create one or more new copies
24 provided that the total number in possession of the Receiving Party
25 does not exceed six (6). The viewing of any such CD-ROMs or DVDs
26 shall be done when all network communication functions of the
27 viewer's device are disabled.

1 (E) The Producing Party shall, on request, make a searchable
2 electronic copy of Source Code Material available on a stand-alone
3 computer during depositions of witnesses who would otherwise be
4 permitted access to such Source Code Material. The Receiving Party
5 shall make such request at the time of the notice for deposition.
6

7 (k) If the Producing Party has any objection to the printing of Source Code for any
8 reason, the parties agree to meet and confer promptly in good faith. The Producing Party shall bear
9 the burden to show good cause why it should not produce the requested pages or printouts, and shall
10 move the Court for a protective order within five (5) business days of its objection showing why it
11 should not print the requested pages or printouts. If the Receiving Party seeks to print more than
12 twenty (20) pages of a continuous block of source code, the foregoing procedures for objection and
13 resolution apply except that the Producing Party shall have ten (10) business days after its objection
14 to move for a protective order;

15 (l) The Receiving Party shall maintain a log of all copies of the Source Code Material.
16 The log shall include the names of the recipients of all paper copies and locations where the
17 paper copies are stored. The Receiving Party shall provide a copy of this log to the Producing Party
18 within five (5) business days of a Producing Party's request for a copy of the log, such request to
19 include a reasonable basis for production (e.g., good cause);

20 (m) If the Receiving Party's authorized Outside Counsel or Experts obtain printouts or
21 photocopies of Source Code Material, the Receiving Party shall ensure that such Outside Counsel or
22 Experts keep the printouts or photocopies in a secured locked area in the offices of such Outside
23 Counsel or Expert. The Receiving Party may also temporarily keep the printouts or photocopies at:
24 (i) the Court for any proceedings(s) relating to the Source Code Material, for the dates associated
25 with the proceeding(s); (ii) the sites where any deposition(s) relating to the Source Code Material are
26 taken, for the dates associated with the deposition(s); and (iii) any intermediate location reasonably
27 necessary to transport the printouts or photocopies (e.g., a hotel prior to a Court proceeding or
28

1 deposition). Source Code Material, in whatever form, including as an excerpt or in a Source Code
2 Document, shall not be transmitted (e.g., by email) or taken outside the territorial United States
3 without the express written consent of the Producing Party;

4 (n) A Producing Party's Source Code Material (including to the extent included in a
5 Source Code Document) may only be transported by the Receiving Party at the direction of a person
6 authorized to have access under this Order to another person so authorized, on paper or removable
7 electronic media (e.g., a DVD, CD-ROM, or flash memory "stick") via hand carry. Source Code
8 Material may not be transported or transmitted electronically over a network of any kind, including a
9 LAN, an intranet, or the Internet, except that an encrypted copy of Source Code Material may be
10 transmitted to a person authorized to have access via FTP with the password to unencrypt the media
11 provided orally, via telephone, or in-person, upon confirmation of receipt. Otherwise, Source Code
12 Material may only be transported electronically for the purpose of Court proceeding(s) or
13 deposition(s) as set forth in paragraph 7.5(m) above and is at all times subject to the transport
14 restrictions set forth herein. But, for those purposes only, the Source Code Materials may be loaded
15 onto a stand-alone computer. The Source Code Material may not be reviewed in public, including on
16 airplanes, trains or other public transportation that would create a risk of unauthorized viewing of the
17 material.

18 (o) In the event that any question is asked at a deposition with respect to which a Party
19 asserts that the answer requires the disclosure of HIGHLY CONFIDENTIAL - SOURCE CODE, the
20 question shall be answered to the extent that the witness is authorized under this Order to view such
21 material and/or, with the consent of the Designating Party, has executed the "Acknowledgement and
22 Agreement to Be Bound by Stipulated Protective Order" (attached hereto as Exhibit A). Prior to
23 answering, all persons present shall be advised of this Order by the party making the confidentiality
24 assertion and, in the case of information designated as HIGHLY CONFIDENTIAL - SOURCE
25 CODE at the request of such party, all persons who are not allowed to obtain such information
26 pursuant to this Order, other than the witness, shall leave the room during the time in which this
27 information is disclosed or discussed.

1 (p) Court reporters and/or videographers shall not retain or be given copies of any
2 portions of Source Code Material, all of which shall be maintained by depositing counsel under the
3 secure conditions required herein. If any portion of Source Code Material or Source Code Document
4 is used during a deposition, the deposition record will identify the exhibit containing any Source
5 Code Material by its production numbers only (*i.e.*, any document containing Source Code Material
6 shall not be made into a deposition exhibit), and the entire deposition transcript shall be deemed
7 designated HIGHLY CONFIDENTIAL - SOURCE CODE until further specifically designated in
8 accordance with this Order. To the extent any portion of Source Code Material is quoted in any
9 document or transcript such as a Source Code Document, either the entire document or transcript will
10 be stamped and treated as HIGHLY CONFIDENTIAL - SOURCE CODE or at least those pages
11 containing any HIGHLY CONFIDENTIAL - SOURCE CODE will be separately bound, designated,
12 and treated as HIGHLY CONFIDENTIAL - SOURCE CODE;

13 (q) Any Expert retained on behalf of a Receiving Party who is to be given access to a
14 Producing Party's HIGHLY CONFIDENTIAL - SOURCE CODE Material (whether in electronic
15 form or otherwise) shall not use any portion of the disclosed Source Code Material to perform
16 software development work, directly or indirectly, intended for commercial purposes with respect to
17 motion capture technology, including without limitation of the type described in the patents asserted
18 in this action unless the disclosed software that was accessed by the Expert was already known to the
19 Expert or in the public domain. This shall not preclude such Experts from consulting in future
20 litigation, so long as such consulting does not involve software development work as described in the
21 preceding sentence that is directly or indirectly intended for commercial purposes;

22 (r) A Party's agreement to the entry of this Order shall not be deemed an admission that
23 the Party must produce Source Code Material in this lawsuit.

24 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
25 **LITIGATION**

26 If a Party is served with a subpoena or a court order issued in other litigation that compels
27 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
28

CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.³

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
2 Party's confidential information in its possession, and the Party is subject to an agreement with the
3 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

- 4 1. promptly notify in writing the Requesting Party and the Non-Party that some
5 or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- 6 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order
7 in this litigation, the relevant discovery request(s), and a reasonably specific description of the
8 information requested; and
- 9 3. make the information requested available for inspection by the Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this court within 14
11 days of receiving the notice and accompanying information, the Receiving Party may produce the
12 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
13 seeks a protective order, the Receiving Party shall not produce any information in its possession or
14 control that is subject to the confidentiality agreement with the Non-Party before a determination by
15 the court.⁴ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
16 seeking protection in this court of its Protected Material.

17 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
19 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
20 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
21 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
22 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
23 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be
24 Bound" that is attached hereto as Exhibit A.

25
26
27 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
interests in this court.

1 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
2 **MATERIAL**

3 Nothing in this Order shall require production of information that a Party contends is
4 protected from disclosure by the attorney-client privilege, the work product immunity or other
5 privilege, doctrine, right or immunity. If information subject to a claim of attorney-client privilege,
6 work product immunity, or other privilege, doctrine, right, or immunity is produced, whether
7 inadvertently or otherwise, such production shall in no way prejudice or otherwise constitute a
8 waiver or estoppel as to a party's right to assert such privilege, doctrine, right, or immunity. When a
9 Producing Party gives notice to Receiving Parties that certain produced material is subject to a claim
10 of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B), except that counsel are not required to delete information that
12 may reside on their respective firm's electronic back-up systems that are over-written in the normal
13 course of business.

14 Within 15 days of providing notice to the Receiving Party that certain produced material is
15 subject to a claim of privilege or other protection, the Producing Party will provide a privilege log
16 setting forth a description of the privileged material and identify the privilege asserted. With respect
17 to any disputes that may arise as to previously produced documents, the parties' rights and
18 obligations shall be subject to and determined by applicable law.

19 **14. MISCELLANEOUS**

20 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
21 its modification by the court in the future.

22 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
23 no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
25 Party waives any right to object on any ground to use in evidence of any of the material covered by
26 this Protective Order.

27 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws
28 and regulations relating to the export of technical data contained in such Protected Material,

1 including the release of such technical data to foreign persons or nationals in the United States or
2 elsewhere. The Producing Party shall be responsible for identifying any such controlled technical
3 data, and the Receiving Party shall take measures necessary to ensure compliance. At least the
4 following restrictions shall apply:

5 1. Anyone viewing source code that the Producing Party has identified as being subject
6 to expert controls must be a US citizen or lawful permanent resident.

7 2. All companies handling source code that the Producing Party has identified as being
8 subject to expert controls must be US companies.

9 3. All copies of source code that the Producing Party has identified as being subject to
10 expert controls must be kept within US borders.

11 14.4 Filing Protected Material. Without written permission from the Designating Party or a
12 court order secured after appropriate notice to all interested persons, a Party may not file in the
13 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
14 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
15 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a
16 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is
17 denied by the court, then the Receiving Party may file the Protected Material in the public record
18 pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court. The Receiving
19 Party shall not file said materials in the public record without first affording the Producing Party an
20 opportunity to file a motion for reconsideration and/or an interlocutory appeal and having each
21 challenge to the Court's order decided, provided that in such case, the Producing Party shall meet and
22 confer with the other Party in a good faith attempt to reasonably minimize the impact of the
23 interlocutory appeal on the pending litigation.

24 **15. FINAL DISPOSITION**

25 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
26 Receiving Party (including Experts) must return all Protected Material to the Producing Party or
27 destroy such material. As used in this subdivision, "all Protected Material" includes all copies,

1 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
2 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
3 must submit a written certification to the Producing Party (and, if not the same person or entity, to
4 the Designating Party) by the 60-day deadline that affirms that the Receiving Party and its Expert(s)
5 have not retained any copies, abstracts, compilations, summaries or any other format reproducing or
6 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
7 retain an archival copy of all pleadings, motion papers, trial, hearing transcripts, legal memoranda,
8 correspondence, trial exhibits, expert reports, attorney work product, and consultant and expert work
9 product, even if such materials contain Protected Material except document productions and source
10 code must be destroyed regardless. Any such archival copies that contain or constitute Protected
11 Material remain subject to this Protective Order as set forth in Section 4 (DURATION). Counsel is
12 not under an obligation to search email for Protected Material.

13 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

14 DATED: August 28, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

16 By: /s/ Steve Berman

Steve Berman

17 *Attorneys for Plaintiffs*

18 DATED: August 28, 2018

MUNGER, TOLLES & OLSON LLP

20 By: /s/ Kelly Klaus

Kelly Klaus

21 *Attorneys for Studio Defendants*

22 DATED: August 28, 2018

DUANE MORRIS LLP

23 By: /s/ Karineh Khachatourian

Karineh Khachatourian

24 *Attorneys for Square Enix/Crystal Dynamics*

1 **CIVIL LOCAL RULE 5-1 ATTESTATION**

2 I, Steve Berman, am the ECF user whose credentials were utilized in the electronic filing of
3 this document. In accordance with Civil Local Rule 5-1(i)(3), I hereby attest that Kelly Klaus and
4 Karineh Khachatourian concurred in the filing of this document.

5 /s/ Steve Berman

6 Steve Berman

1
2 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

3 DATED: August 30, 2018

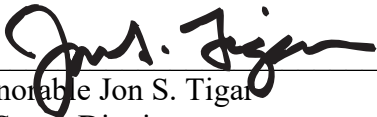
4 
The Honorable Jon S. Tigar
United States District

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for the
Northern District of California on [date] in the case of _____ **[insert formal name of the
case and the number and initials assigned to it by the court]**. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as
my California agent for service of process in connection with this action or any proceedings related
to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____